

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

DEMETRIUS PERRY §
v. § CIVIL ACTION NO. 6:05cv394
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Demetrius Perry, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality his conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Perry pleaded guilty to sexual assault of a child and received deferred adjudication probation, subject to the terms of community supervision, on November 26, 2003. However, his probation was revoked, and on October 14, 2004, the trial court proceeded with the adjudication of guilt and sentenced him to 10 years in prison. Perry did not take a direct appeal, but pursued state habeas corpus relief prior to bringing his federal petition.

Perry's petition complained that his plea of guilty was unlawfully induced, he received ineffective assistance of counsel, he was not told that he was giving up his right to appeal, and his sentence was illegal because he was told that he would get two years' probation but got 10 instead. He also indicated that his sentence was excessive because this is the first time he had been in trouble.

After review of Perry's claims, the Magistrate Judge issued a Report on June 13, 2006, recommending that the petition be dismissed. The Magistrate Judge noted that Perry challenged the

circumstances of his plea of guilty and conviction, rather than the revocation of community supervision, and stated that under Texas law and Fifth Circuit precedent, the order imposing community supervision is considered “final,” commencing the limitations period at that time. *See Caldwell v. Dretke*, 429 F.3d 521, 530 (5th Cir. 2005). Consequently, the Magistrate Judge reasoned, Perry’s limitations time began to run when his appeal time expired, in December of 2003, and his petition is therefore barred by the statute of limitations.

A copy of the Magistrate Judge’s Report was sent to Perry at his last known address, return receipt requested, but no objections have been received; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has carefully reviewed the pleadings and records in this cause, as well as the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. It is further

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So ORDERED and SIGNED this 21st day of July, 2006.

A handwritten signature in black ink, appearing to read "LEONARD DAVIS".

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE